

Message Text

PAGE 01 STATE 190998

70/73
ORIGIN SS-25

INFO OCT-01 ISO-00 SSO-00 CCO-00 /026 R

DRAFTED BY EA/PHL:BAFLECK:KA
APPROVED BY P:PCHABIB
EA/PHL:JELAKE
L/EA:EGVERVILLE (DRAFT)
EA/RHMILLER
DOD/ISA:MABRAMIWITZ (DRAFT)
EA/PHL:DPSULLIVAN
PM/ISO:GCHURCHILL (DRAFT)
S/S:RGAMBLE
D-MR WOOK (SUBS)

----- 122053

O 022355Z AUG 76 ZFF4
FM SECSTATE WASHDC
TO AMEMBASSY CANBERRA IMMEDIATE
INFO AMEMBASSY MANILA IMMEDIATE

S E C R E T STATE 190998

EXDIS, TODEP 28, CANBERRA ALSO FOR HUMMEL

C O R R E C T E D C O P Y (PARA 6 SUBPARA L, LINE 9
OMITTED)

E.O. 11652: GDS

TAGS: MARR, RP

SUBJ: STATUS OF MILITARY BASE NEGOTIATIONS WITH THE
PHILIPPINES

MANILA EYES ONLY FOR AMBASSADOR

1. THIS CABLE PROVIDES YOU WITH THE CURRENT STATUS OF THE
PHILIPPINE BASE NEGOTIATIONS FOR YOUR BACKGROUND. SEPARATE
INSTRUCTIONS WILL BE SENT FOR YOUR USE IN DISCUSSIONS WITH
MARCOS AND ROMULO.

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2. ON APRIL 12, 1976, IN WASHINGTON AT A MEETING CO-
CHAIRLED BY SECRETARY KISSINGER AND SECRETARY ROMULO, WE
TABLED A U.S. DRAFT OF A PROPOSED NEW MILITARY BASES AGREE-
MENT. WHEN NEGOTIATIONS RESUMED IN BAGUIO ON JUNE 15, THE

PHILIPPINE NEGOTIATORS TABLED A PHILIPPINE COUNTERDRAFT.

3. THE TOUGH INITIAL PHILIPPINE POSITION HAS EMPHASIZED PHILIPPINE SOVEREIGNTY OVER THE BASES AND AN APPARENT DESIRE TO EXERCISE REAL OPERATIONAL, NOT JUST COSMETIC, CONTROL OVER THE BASES. REFLECTING AN APPARENT EFFORT TO DIVORCE THE CURRENT NEGOTIATIONS FROM OUR MUTUAL DEFENSE RELATIONSHIP, THE PHILIPPINE COUNTERDRAFT MADE NO REFERENCE TO THE EXISTING MUTUAL DEFENSE TREATY AND THE INITIAL REMARKS BY THE PHILIPPINE NEGOTIATORS OMITTED ANY REFERENCE TO THE U.S.-PHILIPPINE ALLIANCE. THE PHILIPPINE NEGOTIATORS HAVE SOFTENED THEIR POSITION TO SOME EXTENT WITH REGARD TO CERTAIN ISSUES BUT THEIR OVERALL POSITION CONTINUES TO EMPHASIZE THE NEED FOR VISIBLE MANIFESTATIONS OF PHILIPPINE SOVEREIGNTY AND TO SEEK ELIMINATION OF WHAT THEY CONSIDER TO BE RELICS OF U.S. EXTRA-TERRITORIALITY REMAINING FROM THE COLONIAL PERIOD.

4. SINCE JUNE 15 PROGRESS ON PRODUCING AGREED ARTICLES HAS BEEN MINIMAL.

THE PHILIPPINE NEGOTIATORS HAVE INDULGED IN MUCH RHETORIC BUT HAVE BEEN RELUCTANT TO BE PINNED DOWN ON SPECIFIC LANGUAGE AND HAVE BACKED DOWN ON TENTATIVELY AGREED LANGUAGE ON SEVERAL ARTICLES INCLUDING PREAMBLE, JOINT COMMISSION AND POST OFFICES. THIS MAY BE TACTICAL ON THEIR PART. SOME OF THE MAJOR UNRESOLVED ISSUES MAY FALL INTO PLACE ONCE THE QUESTION OF COMPENSATION, WHICH HAS NOT YET BEEN DISCUSSED IN DETAIL (SEE BELOW), HAS BEEN SETTLED. HOWEVER, AVAILABLE INDICATIONS OF PHILIPPINE DESIRES IN THIS REGARD SUGGEST THAT OUR INITIAL U.S. OFFER COULD BE SUFFICIENTLY BELOW THEIR EXPECTATIONS AS TO HAVE THE OPPOSITE EFFECT, AT LEAST INITIALLY.

5. A NUMBER OF AREAS IN ONE OR THE OTHER OF THE TWO DRAFTS HAVE NOT YET BEEN FULLY ADDRESSED IN THE NEGOTIATION.
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TIONS. THESE INCLUDE: DEFINITIONS (WHICH HAS BEEN RECENTLY REFERRED TO A WORKING GROUP FOR DISCUSSION), PUBLIC SERVICES, SURVEYS, U.S. RESERVE ORGANIZATIONS, AND GRANTS TO THIRD COUNTRIES.

6. THE MAJOR UNRESOLVED ISSUES ARE AS FOLLOWS:

A. FACILITIES: THERE HAS BEEN CONSIDERABLE DISAGREEMENT OVER DEFINING PRECISELY WHAT THE RP WILL BE GRANTING US AS "FACILITIES" ON PHILIPPINE BASES. IT IS OUR INTENTION THAT WE BE GRANTED LANDS, BUILDINGS, CONSTRUCTIONS, ETC., WHICH CONSTITUTE A SINGLE, INTEGRATED OPERATING UNIT AT EACH BASE. WE BELIEVE IT ESSENTIAL THAT WE HAVE EXCLUSIVE COMMAND AND CONTROL OVER SUCH INTEGRATED OPERATIONS IN

ORDER TO BE ABLE TO ACHIEVE OUR MILITARY PURPOSES. THE RP WISHES TO AVOID ANY CHARACTERIZATION OF THE FACILITIES THEY WILL GRANT US WHICH WOULD MAKE THOSE FACILITIES APPEAR TO BE EXTRA-TERRITORIAL ENCLAVES. THE RP'S FORMULATIONS OF WHAT THEY ARE GRANTING US HAVE, THEREFORE, FOCUSED ON THE GRANT OF LANDS, BUILDINGS, ETC., AS DISTINCT UNITS -- A CONCEPT AT ODDS WITH OUR NEED FOR CLEARLY ESTABLISHED INTEGRATED OPERATIONS. THERE IS DISAGREEMENT WHETHER USE OF THE FACILITIES FOR COMBAT OPERATIONS WILL REQUIRE PRIOR CONSULTATION (U.S. POSITION) OR GOP APPROVAL (PHILIPPINE POSITION). THE PHILIPPINES IS PROPOSING, AND WE ARE OPPOSING, THE INCLUSION OF PROVISIONS THAT: (1) THE ACTIVITIES OF THE FACILITIES WOULD BE CONDUCTED IN ACCORDANCE WITH MUTUALLY-WORKED OUT PROGRAMS CONSISTENT WITH THE GOP-APPROVED PURPOSES OF THE FACILITIES, AND (2) WOULD PROHIBIT THE LAYING OF ACTIVE MINES IN PHILIPPINE WATERS AND THE INTRODUCTION, STORAGE OR INSTALLATION WITHIN PHILIPPINE TERRITORY OF NUCLEAR, CHEMICAL, BIOLOGICAL OR OTHER UNCONVENTIONAL WEAPONS.

B. GIVEN THE LACK OF AGREEMENT ON THE ABOVE QUESTIONS, CONSIDERATION OF THE QUESTION OF WHAT FACILITIES THE U.S. FORCES WILL BE PERMITTED TO USE HAS BEEN DEFERRED. THERE IS, NEVERTHELESS, GENERAL AGREEMENT THAT SUBIC BAY NAVAL BASE AND CLARK AIR FORCE BASE WILL CONTINUE TO BE MADE AVAILABLE BY THE PHILIPPINE GOVT. THE FUTURE STATUS OF SAN MIGUEL NAVAL COMMUNICATIONS STATION, WALLACE AIR
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STATION, AND JOHN HAY AIR STATION IS AS YET UNDECIDED. THERE HAS BEEN LITTLE DETAILED DISCUSSION OF THE RETURN OF UNUSED BASE LANDS. AMBASSADOR SULLIVAN HAS ADEQUATE INSTRUCTIONS ON THESE ISSUES AT PRESENT.

C. COMMAND AND CONTROL. TENTATIVE AGREEMENT HAS BEEN REACHED THAT THERE SHALL BE PHILIPPINE BASE COMMANDERS AND U.S. FACILITIES COMMANDERS. DISAGREEMENT EXISTS AS TO WHETHER THE PHILIPPINE BASE COMMANDER SHOULD UNILATERALLY ISSUE DIRECTIVES (PHILIPPINE POSITION) OR WHETHER SUCH DIRECTIVES SHOULD BE ISSUED JOINTLY BY THE BASE COMMANDER AND THE U.S. FACILITIES COMMANDER (U.S. POSITION). DISAGREEMENT ALSO EXISTS WHETHER THE BASE COMMANDER OR THE FACILITIES COMMANDER WILL BE SOLE OR INITIAL POINTS OF CONTACT BETWEEN THE U.S. FORCES AND THE PHILIPPINE AUTHORITIES. DISAGREEMENT CONTINUES AS TO WHO SHALL CONTROL PORT TRAFFIC AND AIR TRAFFIC. WASHINGTON GUIDANCE ON THE PROPOSED ARTICLE IS OVERDUE, BUT IS NOW IN THE FINAL CLEARANCE PROCESS HERE.

D. ACCESS. THE INITIAL PHILIPPINE POSITION WAS APPARENTLY BASED ON LACK OF COMPREHENSION THAT SUBIC BAY AND CLARK ARE PRIMARILY SUPPORT BASES FOR UNITS NOT PERMANENTLY

STATIONED IN THE PHILIPPINES. AS A RESULT, THE TWO POSITIONS ARE FAR APART, AND DISCUSSION IS STILL AT AN EARLY STAGE. AMBASSADOR SULLIVAN'S INSTRUCTIONS THEREFORE REMAIN ADEQUATE.

E. CRIMINAL JURISDICTION. THE PHILIPPINE SOLICITOR GENERAL HAS INDICATED THAT ONCE AN AGREEMENT ON THE ULTIMATE AUTHORITY TO DETERMINE OFFICIAL DUTY IS REACHED, THE OTHER POINTS AT ISSUE IN THIS ARTICLE WILL NOT PRESENT TOO MUCH DIFFICULTY. HOWEVER, WE ARE FAR APART ON THIS KEY QUESTION, WITH THE PHILIPPINE NEGOTIATORS MAINTAINING THAT THE ULTIMATE AUTHORITY SHOULD REST WITH PHILIPPINE COURTS WHILE WE STAND FIRM ON OUR PRINCIPLE, APPLIED TO U.S. FORCES ON A WORLD-WIDE BASIS, THAT A U.S. COMMANDER SHALL HAVE THAT AUTHORITY. INSTRUCTIONS HAVE BEEN SENT TO AMBASSADOR SULLIVAN ON THE QUESTION OF CRIMINAL JURISDICTION.

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F. TERM OF AGREEMENT. THE U.S. NEGOTIATORS HAVE PROPOSED THAT THE BASES AGREEMENT BE COTERMINOUS WITH THE MUTUAL DEFENSE TREATY. THE PHILIPPINE PROPOSAL IS FOR A FIVE-YEAR AGREEMENT, RENEWABLE BY MUTUAL AGREEMENT FOR A SUBSEQUENT FIVE YEARS. THE NEGOTIATORS ARE SEEKING SOME WAY OF RECONCILING THE TWO PROPOSALS. THERE IS SUBSTANTIAL DISAGREEMENT BETWEEN DOD AND STATE ON HOW TO RESPOND TO THE PHILIPPINE DESIRE. WE HOPE TO RESOLVE THIS ISSUE SOON AND ISSUE INSTRUCTIONS TO AMBASSADOR SULLIVAN.

G. NPW VISITS. THE PHILIPPINE NEGOTIATING TEAM HAS PROPOSED INCLUSION OF THE CURRENT NOTIFICATION ARRANGEMENTS FOR NUCLEAR POWERED WARSHIP VISITS IN THE NEW AGREEMENT. AS A MATTER OF POLICY WE DO NOT ENTER INTO BILATERAL AGREEMENTS ON NPW PORT CALLS AND WE DO NOT WISH TO INCLUDE AN ARTICLE OF THIS TYPE IN THE CURRENT AGREEMENT. WE ARE WILLING TO CONSIDER THE POSSIBILITY OF A NOTE RESTATING CURRENT PROCEDURES FOR NOTIFICATION FOR ALL SHIP VISITS (NUCLEAR AND NON-NUCLEAR) PROVIDED DIRECTLY TO THE PRESIDENTIAL OFFICE. WE ARE PREPARING INSTRUCTIONS TO AMBASSADOR SULLIVAN ALONG THE LINES DESCRIBED ABOVE.

H. LABOR. THE GOP HAS USED THE NEGOTIATIONS AS A WEDGE TO SEEK MAJOR CHANGES IN THE EXISTING BASE LABOR AGREEMENT (BLA). WE ARE NOT PREPARED TO MAKE SWEEPING CHANGES IN THE BLA, BUT ARE PREPARED TO MEET CERTAIN SPECIFIC PHILIPPINE CONCERNS IN AREAS SUCH AS RECRUITMENT, DISPUTES, PAYROLL DEDUCTIONS AND REDUCTIONS IN FORCE. IF WE ARE UNABLE TO REACH AN AGREEMENT ON LIMITED CHANGES, OUR POSITION WILL BE THAT WE ARE PREPARED TO RENEGOTIATE THE BLA AS A SEPARATE AND DISTINCT ISSUE AFTER CONCLUSION OF THE CURRENT NEGOTIATIONS. WE ARE REVIEWING THE LATEST

REPORT FROM AMBASSADOR SULLIVAN ON THIS ASPECT OF THE
NEGOTIATIONS AND HOPE TO PROVIDE GUIDANCE SHORTLY.

I. APPLICATION OF PHILIPPINE LAWS. THE PHILIPPINE NEGOTIATORS HAVE MADE THIS ARTICLE, FOR WHICH THERE IS NO COUNTERPART IN THE U.S. DRAFT, THE CENTERPIECE OF THEIR OVERALL POSITION. IT WILL BE DIFFICULT TO VERBALIZE THE CONCEPT, WHICH WOULD MAKE PHILIPPINE LAWS, RULES AND REGULATIONS APPLICABLE WITHIN THE BASES AND FACILITIES,
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IN A MANNER SATISFACTORY TO BOTH SIDES. ALTHOUGH THE PHILIPPINE NEGOTIATORS HAVE SHOWN WILLINGNESS TO ACKNOWLEDGE EXEMPTIONS, NOT ALL EXEMPTIONS CAN BE ANTICIPATED IN ADVANCE. BOTH DOD AND STATE HAVE DIFFICULTIES ON THE APPROPRIATE WORDING OF THIS ARTICLE. WE HOPE TO PROVIDE GUIDANCE SOON ON A PROPOSAL SUBMITTED BY THE DELEGATION.

J. COMPENSATION. THE PHILIPPINE SIDE HAS INDICATED ITS DESIRE FOR SOME FORM OF FINANCIAL COMPENSATION FOR CONTINUED U.S. USE OF THE BASES. THEY WOULD PREFER PAYMENT OF AN ANNUAL RENTAL BUT HAVE BEEN TOLD THIS IS NOT POSSIBLE. THEIR DRAFT CONTAINS AN ARTICLE CALLING FOR AN ANNUAL DEFENSE SUPPORT AND, IN ADDITION, THE PROVISION OF CREDITS, LOAN GUARANTEES, OR GRANTS. ALTHOUGH THEY HAVE NOT YET PROVIDED ANY ESTIMATE OF THE AMOUNTS THEY WOULD LIKE TO RECEIVE, THEY HAVE PROVIDED A LENGTHY LIST OF EQUIPMENT NEEDS. THIS LIST, BASED ON A PHILIPPINE FORCE MODERNIZATION PLAN, COSTS OUT VERY ROUGHLY AT \$3.6 BILLION OVER FIVE YEARS. IN PRESENTING THIS LIST, THE PHILIPPINE NEGOTIATORS INDICATED THAT THE GOP COULD USE "ALMOST ANY FIGURE".

K. AT THE APRIL 12 MEETING, SECRETARY KISSINGER STATED THAT THE U.S. WOULD GIVE CONSIDERATION TO A MULTI-YEAR PROGRAM ANALAGOUS TO THOSE WHICH HAD BEEN WORKED OUT FOR SPAIN AND TURKEY. THE DEPARTMENT HAS PROPOSED TO THE OMB THAT PRESIDENTIAL AUTHORIZATION BE SOUGHT FOR AN INITIAL OFFER TO THE PHILIPPINES OF \$30 MILLION IN GRANT FUNDS AND \$34 MILLION IN CREDITS AND LOAN GUARANTEES ON AN ANNUAL AVERAGE OVER A FIVE-YEAR PERIOD, WITH THE TIMING AND CONDITIONS OF SUCH AN OFFER TO BE DETERMINED BY THE SECRETARIES OF STATE AND DEFENSE. WE HAVE ALSO RECOMMENDED THAT AUTHORITY BE SOUGHT TO RAISE THIS INITIAL OFFER IF IT SHOULD APPEAR NECESSARY TO DO SO IN THE COURSE OF THE NEGOTIATIONS, UP TO \$100 MILLION OF WHICH NO MORE THAN \$50 MILLION WOULD BE GRANTS, WITH THE TIMING AND CONDITIONS OF ANY INCREASE IN THE INITIAL OFFER TO BE DETERMINED BY THE SECRETARIES OF STATE AND DEFENSE. DOD AGREES WITH THE INITIAL OFFER, BUT IS RECOMMENDING THAT THE CEILING BE \$90 MILLION WITH NO MORE THAN \$40 MILLION IN

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GRANTS.

L. OTHER ISSUES. OTHER ISSUES OF LESSER GRAVITY, BUT WHICH MAY GIVE DIFFICULTIES DURING THE COURSE OF THE NEGOTIATIONS INCLUDE: TAXATION, SALES AND SERVICES, CLAIMS, TITLE TO PROPERTY, INTELLIGENCE SHARING, AND CURRENCY. (ADDITIONAL INSTRUCTIONS HAVE BEEN SENT ON ALL THESE ISSUES EXCEPT CLAIMS AND SOME ASPECTS OF TAXATION WHICH ARE UNDER PREPARATION.) ADDITIONALLY, THE FOLLOWING ARTICLES ARE NOT YET AGREED UPON BUT DO NOT APPEAR TO PRESENT OVERWHELMING DIFFICULTIES: ASYLUM AND REFUGE, PREAMBLE, SECURITY, MUTUAL COOPERATION, NATURAL RESOURCES, ENTRY AND EXIT, REMOVAL OF PROPERTY, LOCAL PROCUREMENT, ADMINISTRATION, ENVIRONMENTAL MEASURES, CONVERSION OF BASES, AND INTERPRETATION OF THE AGREEMENT. (AMBASSADOR SULLIVAN HAS HAD INSTRUCTIONS ON ALL THESE ISSUES, ALTHOUGH SOME ARE NOW BEING REVIEWED ON THE BASIS OF HIS COMMENTS AND RECOMMENDATIONS.)

M. THE PHILIPPINE NEGOTIATORS HAVE PROPOSED THAT THE AGREEMENT BE SET FORTH IN A PILIPINO (TAGALOG) TEXT AS WELL AS IN ENGLISH. THIS WOULD PROBABLY PRESENT THEM WITH DRAFTING DIFFICULTIES AND WOULD CAUSE US A MAJOR PROBLEM OF AUTHENTICATION OF THE PILIPINO TEXT. IF AUTHENTICATION COULD NOT BE ACCOMPLISHED, WE WOULD HAVE TO INSIST THAT THE AGREEMENT PROVIDE THE ENGLISH TEXT BE THE AUTHORITATIVE ONE. WE HAVE INFORMED AMBASSADOR SULLIVAN OF OUR DIFFICULTIES WITH THIS PROPOSAL. HABIB

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Message Attributes

Automatic Decaptioning: Z
Capture Date: 15 SEP 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MILITARY BASE AGREEMENTS, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 02 AUG 1976
Decaption Date: 28 MAY 2004
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: BoyleJA
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976STATE190998
Document Source: ADS
Document Unique ID: 00
Drafter: EA/PHL:BAFLECK:KA
Enclosure: n/a
Executive Order: 11652 GDS
Errors: n/a
Film Number: D760297-1149
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t197608103/baaaepph.tel
Line Count: 305
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Office: ORIGIN SS
Original Classification: SECRET
Original Handling Restrictions: ONLY
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 6
Previous Channel Indicators:
Previous Classification: SECRET
Previous Handling Restrictions: ONLY
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: BoyleJA
Review Comment: n/a
Review Content Flags:
Review Date: 21 MAY 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <21 MAY 2004 by ifshinsr>; APPROVED <15 SEP 2004 by BoyleJA>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: STATUS OF MILITARY BASE NEGOTIATIONS WITH THE PHILIPPINES MANILA EYES ONLY FOR AMBASSADOR
TAGS: MARR, RP, US
To: CANBERRA INFO MANILA
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006